Bank Insurance & Securities Association

September 25, 2003

VIA FACSIMILE

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington DC 20551

Re: Docket No. OP-1158

Dear Ms. Johnson:

The Bank Insurance & Securities Association **is a trade group** of financial **institutions** selling securities and insurance in the **bank** distribution channel, Its 450 institutional members are a cross section of banks, **thrifts,** credit unions and **the various** businesses that support their products **and** services, We appreciate the opportunity to comment upon the **Board's** interpretation of the anti-tying restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 and related supervisory guidance.

Your efforts to **further** clarify permissible forms of tying are to be applauded **as** they will lend **certainty** in **an area** that is frequently misunderstood by **bank** customers **and** misrepresented **by bank** competitors. We have reviewed **the** careful legal **and** factual **analysis** contained in the proposed interpretation **and** supervisory guidance, and **we** support your interpretation,

As the Board itself noted in the preamble to the final regulations issued **on** February **20,** 1997, which regulations amended the tying restrictions then in **effect, concerns about the** "unique competitive advantages" **and** "excessive market power" **allegedly enjoyed by** bank holding companies and their nonbank affiliates due to **their affiliation** with **banks** -- concerns which drove the adoption of the original regulation -- are **no longer** justified. In fact, these advantages are enjoyed less and less **by** banks **themselves** due to increased competition from non-commercial **bank** financial institutions,

The logic applied by the Board in **1997 is even sounder today. Bank** customers **unhappy with even perceived pressure to purchase an additional** unwanted **product** will turn to another bank or **nonbank** that will **be ready, willing and** able to provide the customer **with the desired product, While the** Board **obviously** must **follow** the strictures of Section 106, and **while the legislative** history **of Section** 106 indicates that economic power, **anti-**competitive effects and **effects** on interstate commerce are not necessary elements of **a** Section **106 claim,** the Board's efforts to modernize Section 106 **should** consider **the**

303 West Lancaster Ave., Suite **1C • Wayne,** Pennsylvania **• 190874938**
Phone; **610.989.9047 • Fax: 610.989.9102 • e-mail:** BISA@BISA.org **• web** site: www.BISAnet.org

realities of the post-Gramm-Leach-Bliley Act era as well as the developing Internet marketplace.

Focusing for the moment on the sale of insurance products and annuities by banks and thrifts (a critical issue for our members), in light of the fact that federal and state laws and regulations[1] make it illegal for banks to coercively tie the sale of insurance to any extensions of credit, it is not surprising that study after study shows that banks traditionally have not coerced customers into buying insurance from them. Research over the last three decades includes a study by the National Association of Insurance Commissioners (1970), The Ohio University Study (1973), the Huber Study (1976), the University of Michigan/Federal Reserve Board consumer credit survey (1985), the Federal Reserve Board consumer attitude and credit insurance survey (1985), the Federal Reserve Board report on consumer experiences with credit insurance (1986), a study published in the *Journal of Insurance Regulation* (1988), Gallup/*Best's Review* consumer poll (1990), and the GAO study of bank insurance powers (1990). The Massachusetts Financial Services Advisory Committee reported as follows in its 1995 report on Regulation of the Financial Services Industry in that state:

> "Involuntary tie-in-sales are and should continue to be illegal. This has and can continue to be a matter for regulatory review. The Committee notes however that within the Division of Insurance (DOI), in connection with Savings Bank Life Insurance Company (SBLI) and credit related insurance, and throughout the country where unrestricted bank sales of insurance are already permitted, actual evidence of tie-in incidents are few and far between. Neither the SBLI customer support staff nor DOI staff report problems of this nature. At the September 1995 National Association of Insurance Commissioners (NAIC) meeting, Commissioners in states permitting bank sales of insurance also responded that coercion has not been a significant problem."

These and other research studies disprove claims of coercive tie-ins between insurance purchases and loans.

The Office of the Comptroller of the Currency and the Board long ago determined that there was no evidence of coercive tie-ins in states that allow banks to sell insurance, and there is no competitive or risk related rationale to justify further restrictions on the conduct of insurance agency activities by banking organizations.[2] Coercion "is not a

[1] New Consumer Protections for Depository Institution Sales of Insurance which became effective April 1, 2001 also prohibit the tying of credit to the purchase of an insurance product or annuity.

[2] H. Robert Heller, Governor, Federal Reserve System, quoted in Steven Brostoff, "Bank Regulators Urge Insurance Sales," *National Underwriter*, September 19, 1988, pp. 3, 20.

widespread or significant problem in lending by banks or bank holding companies.'" The 1990 GAO study echoed these findings.

Surveys of state banking and insurance departments indicate that coercive tie-ins are very rare. Regulators expressed no concern to the GAO about abuses in small town banks.[4] There is no evidence of systemic coercion in bank sales in states where banks sell insurance. A 1994-95 survey of state regulators about possible abusive bank insurance practices drew responses from 27 states. Each of their responses summed up the experience of all: coercive tie-ins by banks are negligible to nonexistent.[5]

The American Insurance Association has stated that "deposit-taking institutions generally do not dominate their markets to such an extent that substantial market powers could be used to force their way into the insurance market by compelling the purchase of an insurance product by their depositors."' "Studies such as those reported by the *Journal of Insurance* Regulation reveal that "while the possibility of coercion does exist, the threat is not great enough to justify prohibiting banks from engaging in insurance distribution."[7]

This Historical evidence lays a solid basis for the Board's proposed interpretations, particularly the position that:

> ". . , section 106 does not prohibit a bank from granting credit or providing any other product to a customer based solely on a desire or hope (but not a requirement) that the customer will obtain additional products from the bank or its affiliates in the future. This is true even if the bank conveys to the customer this desire or hope for additional business. Section 106 also does not prohibit a bank from cross-marketing the full range of products offered by the bank or its affiliates to a customer or engaging an existing customer to purchase additional products offered by the bank or its affiliates. Cross-marketing and cross-selling activities, whether suggestive or aggressive, are part of the nature of ordinary business dealings and do not, in and of themselves, represent a violation of section 106."

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[3] Letter to Sen. William Proxmire, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, from G. William Miller, Chairman of the Board of Governors of the Federal Reserve System, October 6, 1978.

[4] United States General Accounting Office, *Bank Powers: Issues Relating to Banks Selling Insurance*, GAO/GGD-90-113, September 1990, pp. 3-4.

[5] Michael D. White, "Some Key Findings from FIIA's Survey of State Banking and Insurance Regulators," *The FIIA Guide to State Bank Insurance Laws*, 1995, p. 3.

[6] Edgar W. Armstrong, Jr., "Overview: Bank Insurance Regulation," *The Banker's Guide to Income-Producing Insurance*, 1989, pp. 213-217.

[7] Jerry D. Todd and Michael L. Murray, "Banks in Insurance: Increase or Reduce competition?," *Journal of Insurance Regulation*, June 1988, pp. 518-537; *see also* Scott J. Cipinko, letter to *National Underwriter* (P/C), January 1, 1990, pp. 13-14.

Commercial banks should not be restricted (beyond what Section 106 clearly requires) in their efforts to cross-market and cross-sell in today's highly competitive marketplace.

Very truly yours,

Kathleen W. Collins

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Washington Counsel
Bank Insurance & Securities Association